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ABSTRACT

This document provides parents of children with disabilities, from birth through age 26, with an overview of their educational rights with respect to special education. It stresses that parents must be given an opportunity to participate in meetings on identification, evaluation, educational placement, and the provision of a Free Appropriate Public Education. Specific topics addressed include: (1) procedural safeguards notice; (2) parent consent; (3) prior notice to parents; (4) evaluation procedures; (5) independent educational evaluation; (6) mediation; (7) impartial due process hearings; (8) due process hearing rights; (9) administrative appeal/impartial review; (10) civil action; (11) child's status during proceedings; (12) award of attorney fees; (13) placement in an alternative educational setting; (14) children enrolled in private schools; (15) transfer of parental rights at age of majority; (16) surrogate parents; (17) access to records; (18) amendment of records at parent's request; (19) complaints; and (20) relationship of the Individuals with Disabilities Education Act to other disability legislation. (CR)

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PROCEDURAL SAFEGUARDS AVAILABLE TO
PARENTS OF CHILDREN WITH DISABILITIES

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Procedural Safeguards Available to Parents of Children with Disabilities

Introduction

This document provides parents of children with disabilities, from birth through age 26, an overview of their educational rights with respect to special education. Parents must be given an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a Free Appropriate Public Education (FAPE).

Procedural Safeguards Notice

A Procedural Safeguards Notice shall be provided to parents on:

1. An initial referral for evaluation.
2. Each notification of an individualized education program (IEP) meeting.
3. Reevaluation of the child.
4. Registration of a due process complaint.
5. Or before the date on which the decision to take disciplinary action involving a change in placement.

Parent Consent

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

The public agency must obtain informed parental consent before conducting a preplacement evaluation, any reevaluation, or initially placing a child with disabilities in a program providing special education and related services. If a parent fails to respond to a request for a reevaluation, the educational agency may conduct a reevaluation if it can demonstrate that reasonable measures to obtain parental consent have been taken.

To conduct an initial evaluation, the district must seek parental consent and provide notice which includes:

1. The reason(s) and nature for an evaluation.
2. A description of the types of special education programs and services available within the intermediate school district (ISD).

3. A list of organizations, including addresses and phone numbers, available to assist parents in understanding the special education process.

4. A statement of a parent's right to examine all records and to participate in meetings with respect to identification, evaluation, program, educational placement and the provision of a FAPE.

5. A statement that a parent may be accompanied to an individualized educational planning committee (IEPC) meeting by any person(s) the parent desires.

6. The right to obtain an independent educational evaluation (IEE) if the parent disagrees with the agency's evaluation.

7. A statement of the opportunity for the parent to provide the multidisciplinary evaluation team (MET) with information about their child's suspected disability and the opportunity to present information at the IEPC meeting.

8. The public agency may use the hearing procedures in Michigan's Revised Administrative Rules for Special Education (Rules), Rules 340.1724 to 340.1724b, to determine if the person may be evaluated or initially provided special education and related services without parental consent.

If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Rule 340.1725 (administrative appeal) and Rule 340.1725a (civil action) and to have the child remain in his or her present educational placement during the pendency of any administrative or judicial proceeding.

Prior Notice to Parents

The public agency must provide prior written notice to the parents of a child with disabilities each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child.

The notice must include:

1. A full explanation of all of the procedural safeguards available to the parents under Part B of the Individuals with Disabilities Education Act (IDEA).

2. A description of where a parent can obtain a copy of the procedural safeguards document.

3. A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.

4. A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal.

5. A description of any other factors which are relevant to the agency's proposal or refusal.

6. A list of sources that parents may contact to obtain assistance in understanding the content of the prior notice.

The notice must be written in language understandable to the general public, and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the educational agency shall have the notice translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. The district must maintain written evidence that these requirements have been met.

Evaluation Procedures

"Evaluation" means procedures used in accordance with Section 614 of the IDEA. An evaluation will determine whether a child is a child with a disability, the nature and extent of the special education and related services that the child needs, and provide information relating to the child's involvement and progress in the general curriculum. Preschool children must also be assessed to determine participation in appropriate activities. The term also means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

The parent has the right to:

1. Have an interpreter/translator present if the primary language is not English or if the student is deaf/hearing impaired or visually impaired, unless it is clearly not feasible to do so.

2. Be assured that testing does not discriminate on the basis of race, language, or cultural background.

3. Have evaluation instruments validated for the specific purpose(s) for which they were intended and administered by trained personnel in conformance with the instructions provided by their producer.

4. Have their child assessed in all areas of suspected disability using instruments that assess specific areas of educational need and do not produce merely a single intelligent quotient (IQ) score. No single procedure is to be used as the sole criterion for determining an appropriate special education program for the child.

5. The use of evaluation instruments and procedures adapted for children with impaired sensory, physical, or speaking skills, and consideration of age, socioeconomic, and cultural background.

6. Have the evaluation made by a MET which includes a teacher or person knowledgeable in the area of the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, behavioral factors, general intelligence, academic performance, communicative status, and motor ability.

7. Provide the MET with information about the child's suspected disability, along with any evaluation the parent may have obtained for the child.

8. Have an initial evaluation conducted by a MET within 30 school days after the school has received the written permission to evaluate.

9. Expect a reevaluation every three years to determine if the child is still a child with a disability and eligible for special services.

10. Request reevaluations more frequently than three years if it appears appropriate.

11. Be notified of each evaluation procedure, test, record, or report the IEPC used in determining eligibility, and the need for special education programs or services.

12. Have a vocational evaluation if the child is to receive vocational education. The vocational evaluation must include an assessment of:

    a. the student's personal adjustment skills;
    b. the student's aptitudes;
    c. the student's interest; and
    d. the student's academic achievement.

The evaluation must also include special information regarding the child's disability and is to be conducted by personnel qualified to administer and interpret the evaluation.

Independent Educational Evaluation

"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. "IEE at public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

The parent of a child with a disability or suspected disability has the right to obtain an IEE of the child, as defined in Rule 340.1701a(a).

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a due process hearing under Rule 340.1724 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. If the parent obtains an IEE at their own expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of a FAPE to the child, and may be presented as evidence at a due process hearing regarding the child.

If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense. Each public agency shall provide to parents, on request, information about where an IEE may be obtained. When an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the public agency uses when it initiates an evaluation.

Mediation

Mediation is available to all parties whenever a hearing is requested. The IDEA mediation requirements are:

1. Mediation is free and voluntary.

2. Mediation cannot be used to deny a parent's right to a due process hearing.

3. Mediation must be conducted by a qualified and impartial mediator.

4. The state must maintain a list of individuals who are qualified mediators and knowledgeable about the laws and regulations on special education.

5. Mediation shall be scheduled in a timely manner in a convenient location.

6. Mediators are subject to mutual agreement by all parties.

7. An agreement reached by the parties must be set forth in a written mediation agreement.

8. Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.

9. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

Impartial Due Process Hearing

A parent or a public agency may initiate a hearing regarding the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child.

Parents must give notice to the public agency, as appropriate, when filing a request for due process. The notice request must contain the following information:

1. The name of child, address of residence of child, and name of school the child attends.

2. A description of the nature of the problem, including related facts.

3. A proposed resolution of the problem, to the extent known and available to parents at that time.

This notice must remain confidential.

A model form is available at the ISD to assist parents in filing due process requests.

A hearing will be conducted by the public agency directly responsible for the education of the child.

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a due process hearing.

A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

Each public agency shall keep a current list of persons who serve as hearing officers; this list is developed and distributed by the Michigan Department of Education (MDE). This list shall be provided to the parent upon any request for a hearing. The list must include a statement of the qualifications of each of those persons.

The public agency shall ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal described below.

Due Process Hearing Rights

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

2. Present evidence and confront, cross examine, and compel the attendance of witnesses.

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five calendar days before the hearing.

4. Obtain a written or electronic verbatim record of the hearing or obtain alternate forms of the verbatim record to be provided in the parent's native language.

5. Obtain written findings of fact and decisions. After deleting any personally identifiable information, the public agency shall transmit those findings and decisions to the state advisory panel and make them available to the public.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

Administrative Appeal; Impartial Review

Any party aggrieved by the findings and decision in the hearing may appeal to the MDE. If there is an appeal, the MDE shall conduct an impartial review of the hearing. The official conducting the review shall:

1. Examine the entire hearing record.

2. Ensure that the procedures at the hearing were consistent with the requirements of due process.

3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply.

4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

5. Make an independent decision on completion of the review.

6. Give a copy of written findings and the decision to the parties.

7. Conduct reviews involving oral arguments at a time and place which is reasonably convenient to the parents and child involved.

Civil Action

Any party aggrieved by the findings and decision made in an administrative review has the right to bring a civil action in state or federal court.

Child's Status During Proceedings

During the pendency of any administrative hearing or judicial proceeding, the child involved in the hearing must remain in his or her present educational placement, unless the public agency and the parents of the child agree otherwise.

If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, shall be placed in the public school program until the completion of all the proceedings.

Subsequent to a disciplinary action taken by the public agency, a parent may request a hearing to challenge an interim alternative educational setting. The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the child's assignment to the interim setting.

If a parent chooses to challenge a proposed change in placement (after the expiration of an interim alternative placement), the child shall remain in the current placement (the placement prior to the interim alternative educational setting). A child shall remain in this placement during the hearing process unless a hearing officer orders another placement.

Award of Attorney Fees

Section 615(i)(3)(D-G) of the IDEA Amendments of 1997 are reprinted below. These regulations became effective June 4, 1997.

(D) **ATTORNEYS' FEES**

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
(II) the offer is not accepted within 10 days; and
(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

(E) **EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS**- Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) **REDUCTION IN AMOUNT OF ATTORNEYS' FEES**- Except as provided in subparagraph (G), whenever the court finds that—
(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7); the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) **EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES**- The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

Placement in an Alternative Educational Setting

Section 615, subsection (k) of the IDEA Amendments of 1997, is reprinted below. These are the procedures which must be followed regarding placement of a child in an alternative educational setting.

(k) **PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING**-
(1) **AUTHORITY OF SCHOOL PERSONNEL**-
(A) School personnel under this section may order a change in the placement of a child with a disability—
(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

(I) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary; to address the behavior.

(2) **AUTHORITY OF HEARING OFFICER**-A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

(B) considers the appropriateness of the child's current placement;

(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

(3) **DETERMINATION OF SETTING**-

(A) **IN GENERAL**-The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

(B) **ADDITIONAL REQUIREMENTS**-Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

(4) **MANIFESTATION DETERMINATION REVIEW**-

(A) **IN GENERAL**-If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural

safeguards accorded under this section; and

(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(B) **INDIVIDUALS TO CARRY OUT REVIEW**-A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

(C) **CONDUCT OF REVIEW**-In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

(II) observations of the child; and

(III) the child's IEP and placement; and

(ii) then determines that—

(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(III) the child's disability did not impair the ability of the child to control the behavior subject disciplinary action.

(5) **DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY**-

(A) IN GENERAL-If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities, may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

(B) **ADDITIONAL REQUIREMENT**-If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(6) **PARENT APPEAL**-

(A) **IN GENERAL**-

(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

(B) **REVIEW OF DECISION**-

(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

(7) **PLACEMENT DURING APPEALS**-

(A) **IN GENERAL**-When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

(B) **CURRENT PLACEMENT**-If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

(C) **EXPEDITED HEARING**-

(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

(8) **PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES**-

(A) **IN GENERAL**-A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) **BASIS OF KNOWLEDGE**-A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(ii) the behavior or performance of the child demonstrates the need for such services;
(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or
(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

(C) **CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE-**
(i) **IN GENERAL**-If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).
(ii) **LIMITATIONS**-If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(9) **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES-**
(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(10) **DEFINITIONS**-For purposes of this subsection, the following definitions apply:
(A) **CONTROLLED SUBSTANCE**-The term "controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
(B) **ILLEGAL DRUG**-The term "illegal drug"—
(i) means a controlled substance; but
(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
(C) **SUBSTANTIAL EVIDENCE**-The term "substantial evidence" means beyond a preponderance of the evidence.

(D) **WEAPON**-The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Children Enrolled in Private Schools

A local educational agency may not be required to pay for the cost of education (including special education and related services) if:

1. The parents do not inform the IEP team before removing their child from the public school that they are rejecting the proposed placement of the IEP team,

2. If the parents do not make the child available for evaluation, or

3. The action is determined to be "unreasonable" by the judicial system.

The parents must inform the IEP team, in writing, of their concerns and intent to enroll their child in a private school at public expense. This notice must be received by the public agency ten business days prior to the removal of the child and enrollment in a private school.

Transfer of Parental Rights at Age of Majority

When a child with a disability reaches the age of majority (age 18 in Michigan if a legal guardian has not been appointed by the court), the public agency shall provide notice to both the individual and the parents that all rights accorded to parents transfer to the child. All rights accorded to parents transfer to children who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

Surrogate Parents

Each public agency shall assign an individual to act as a surrogate for the parent to protect the education rights of a child when:

1. No parent can be identified.

2. The public agency, after reasonable efforts, cannot discover the whereabouts of a parent.

3. The child is a ward of the state under the laws of the state.

The method for determining whether a child needs a surrogate for the parent and for assigning a surrogate for the parent to a child is the responsibility of the public agency.

Public agencies appointing a surrogate for the parent to a child ensures that the person:

1. Has no interest that conflicts with the interests of the child that he/she represents.

2. Has knowledge and skills to adequately represent the child as identified in the Michigan Special Education State Plan (State Plan).

3. Is not an employee of the public agency which is involved in the education or care of the child.

4. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

The surrogate for the parent may represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child.

2. The provision of a FAPE to the child.

Access to Records

Each public agency shall permit parents to inspect and review all records relating to their child with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child, which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made. Parents requesting records for use at an IEPC meeting, a hearing, or an appeal shall be given access to the requested records immediately.

The right to inspect and review educational records under this section includes:

1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.

2. The right to have a representative of the parent inspect and review the records.

3. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any educational record includes information on more than one child, the parents of each of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information. Each agency shall provide parents, on request, a list of the types and locations of educational records collected, maintained, or used by the agency.

Fees for Searching, Retrieving, and Copying Records

A participating agency may not charge a fee to search for or to retrieve information from the child's educational record. An agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

Record of Access

Each public agency shall keep a record of parties obtaining access to educational records collected or maintained, except access by parents and authorized employees of the participating agency. Records of access shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records at Parent's Request

A parent who believes that information in educational records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of their child, may request the participating agency which maintains the information to amend the information.

The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Rule 340.1868.

The agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the education records maintained on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the child under this section must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency. If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

Complaints

A formal complaint is a specific written and signed allegation, that there is an uncorrected violation, misinterpretation, or misapplication of the Michigan Revised Administrative Rules for Special Education (Rules), Public Act 291 of 1995, the IDEA, the State Plan, or the ISD's/public agency's special education plan. The complaint must include the facts on which the allegation is based. Any citizen may file a complaint with the ISD or with the MDE.

Should the parent suspect a violation, the parent should contact the ISD's director of special education or the superintendent's designee. This person may attempt to resolve the concerns informally, but the parent must be told of their right to file a formal complaint. The parent must also be given a copy of the Rules dealing with complaints (Part 8 of the Rules), and a copy of the Complaint Procedures for Special Education. The complainant may request assistance in writing a formal complaint.

If the parent files a formal complaint, the ISD must investigate the complaint and give the parent a copy of the findings within 21 calendar days. If, after reviewing the agency's report, the parent disagrees with the findings, the parent may appeal to the MDE. If the ISD does not act in a timely manner to investigate the parent's concerns, the parent may request the MDE to investigate the concerns. A written report shall be completed within 60 calendar days from the ISD's or the MDE's receipt of the complaint unless the time line is extended for exceptional circumstances relative to the complaint.

Rule of Construction

Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.